

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

MICHAEL ANTHONY BROWN,)	
)	
Plaintiff,)	
)	
v.)	Case No. CV415-179
)	
OFFICE OF THE DISTRICT)	
ATTORNEY, <i>et al.</i> ,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Michael Anthony Brown has filed a 42 U.S.C. § 1983 complaint for damages against the prosecutor and public defender involved in the state court criminal prosecution against him. Doc. 1. He also sues the “Office of the District Attorney” and the “Office of the Public Defender.” *Id.*; see also attached state court docket showing that his prosecution ended with his October 2, 2015 guilty plea to drug possession charges).¹

¹ As Brown is proceeding *in forma pauperis* (“IFP”), docs. 9 & 10, his action is subject to immediate dismissal if the Court determines that it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915(e)(2) (allowing the dismissal of IFP actions “at any time” they are determined to raise non-cognizable claims); 28 U.S.C. § 1915A (requiring early screening of all prisoner/detainee complaints against governmental entities or officials and the dismissal of non-cognizable claims).

Brown complains that defendant June Fogle, his then public defender, waived his right to a preliminary hearing without his consent. Doc. 1 at 6. He seeks “eight thousand dollars an[d] all proceedings in superior court chatham county dismissed against me.” *Id.* at 7.

His case is dead on arrival. First, § 1983 affords him no remedy: “[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement. . . . He must seek federal habeas corpus relief (or appropriate state relief) instead.” *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (quotes and cites omitted); *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (“[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983.”); *Cooks v. Sec’y, Fla. Dep’t of Corr.*, 599 F. App’x 940, 941 (11th Cir. 2015) (district courts must “‘ensure that state prisoners use only habeas corpus (or similar state) remedies when they seek to invalidate the duration of their confinement--either directly through an injunction compelling speedier release or indirectly through a judicial determination that necessarily implies the unlawfulness of the

State's custody.'") (quoting *Wilkinson*, 544 U.S. at 81); *Harris v. Purvis*, 2015 WL 3439857 at * 1 (S.D. Ga. May 27, 2015).²

Second, "a public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). Defendant Fogle is not a state actor, so she cannot be sued under § 1983. It follows that her "office" cannot be sued either, even assuming it is capable of being used under Fed. R. Civ. P. 17 and enjoyed no *respondeat superior* or immunity defenses.

Third, the prosecutor defendant (Lauren Purvis) is immune from suit, as Brown alleges nothing beyond activities by her that fall within her official function. *Imbler v. Pachtman*, 424 U.S. 409, 409 (1976) ("[I]n initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983."); *Jackson v. Capraun*, 534 F. App'x 854, 859 (11th Cir. 2013) (prosecutor entitled to

² Before he can bring a federal habeas action, he must first exhaust his available state remedies through either a direct appeal or a petition for collateral relief. *Wilkinson*, 544 U.S. at 79 (federal "habeas corpus actions require a petitioner fully to exhaust state remedies, which § 1983 does not"); 28 U.S.C. § 2254(b), (c). If Brown wishes to proceed via habeas corpus, he must submit a separate petition in compliance with the applicable rules. Such petition, however, would be subject to immediate dismissal for lack of exhaustion of his available state remedies.

absolute immunity for initiating prosecution even if he did so with malicious intent). It likewise follows that her “office” cannot be sued, either, even assuming it otherwise possessed Fed. R. Civ. P. 17 capacity and enjoyed no immunity defenses.

Given the sheer frivolity of Brown’s complaint, it must be **DISMISSED WITH PREJUDICE** and a re-pleading option is not warranted. *Dysart v. BankTrust*, 516 F. App’x 861, 865 (11th Cir. 2013) (“[D]istrict court did not err in denying Dysart's request to amend her complaint because an amendment would have been futile.”); *Langlois v. Traveler's Ins. Co.*, 401 F. App’x 425, 426-27 (11th Cir. 2010); *Simmons v. Edmondson*, 225 F. App’x 787, 788-89 (11th Cir. 2007) (district court did not err in dismissing complaint with prejudice without first giving plaintiff leave to amend because no amendment could have overcome the defendants' immunity). This case should also be recorded as a “strike” under 28 U.S.C. § 1915(g).

Meanwhile, it is time for Brown to pay his filing fee. His furnished PLRA paperwork reflects \$117.50 in average monthly deposits over the six month period prior to the date of his Prison Account Statement. Doc. 9. He therefore owes a \$23.50 initial partial filing fee. *See* 28 U.S.C. §

1915(b) (1) (requiring an initial fee assessment “when funds exist,” under a specific 20 percent formula). Plaintiff’s custodian (or designee) therefore remit the \$23.50 initial partial filing fee and shall set aside 20 percent of all future deposits to his account, then forward those funds to the Clerk each time the set aside amount reaches \$10.00, until the balance of the Court’s \$350.00 filing fee has been paid in full.

Also, the Clerk is **DIRECTED** to send this R&R to plaintiff’s account custodian immediately, as this payment directive is nondispositive within the meaning of Fed. R. Civ. P. 72(a), so no Rule 72(b) adoption is required. In the event plaintiff is transferred to another institution, his present custodian shall forward a copy of this Order and all financial information concerning payment of the filing fee and costs in this case to plaintiff’s new custodian. The balance due from the plaintiff shall be collected by the custodian at his next institution in accordance with the terms of this Order.

SO REPORTED AND RECOMMENDED, this 12th day of November, 2015.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA



CHATHAM COUNTY, GA

Eastern Judicial Circuit of Georgia

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Case Information

Court: Superior
Case Number: CR150007
Case Type: DRUGS - POSSESSION-F
Judge: HONORABLE MICHAEL KARPf
Assistant District Attorney: LAUREN PURVIS
Date Filed: 1/2/2015
Status: CLOSED - GUILTY PLEA(N)
Disposition Date: 10/2/2015
Disposition: GUILTY PLEA(N)

Defendant Information

Name: BROWN, MICHAEL ANTHONY
DIN: S0087539
Gender: MALE
Race: AFRICAN AMERICAN
Height: 72
Weight: 180
Eyes: BROWN
Hair: BLACK

Attorney Information

W. THOMAS HUDSON
 317 WEST YORK STREET
 SAVANNAH, GA
 31401

Bondsman Information

N/A

Case Events

Date	Time	Code	Judge	Action
10/2/2015	09:15AM	ARRAIGNMENT/PLEA HEARING	MICHAEL KARPf	
9/18/2015	09:00AM	ARRAIGNMENT/PLEA HEARING	MICHAEL KARPf	OTHER
8/27/2015	1:30PM	SCHEDULING CONFERENCE	MICHAEL KARPf	
6/1/2015	1:30PM	ARRAIGNMENT/PRETRIAL HEARING	MICHAEL KARPf	
4/20/2015	1:30PM	ARRAIGNMENT/CALENDAR CALL	MICHAEL KARPf	

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Charges

Charge	Description	Counts	Severity	Charge Date	Disposition
16-13-30(A)	POSSESSION CONTROLLED SUBSTANCE	1	FELONY	2/25/2010 8:17:02 AM	Guilty Plea Negotiated 10/2/2015
Sentencing Details:		Description	Fine	Duration	
		IN CCJ	\$0.00	1 Years-PRISON	

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Proceedings

10/2/2015		SENTENCE ORDER/PETITION NEG PLEA/VOL TRN/ACCUSATION			
10/2/2015		CASE DISPOSED	GUILTY PLEA NEGOTIATED	MICHAEL KARPf	CASE DISPOSED GN
10/2/2015	09:15AM	ARRAIGNMENT/PLEA HEARING		MICHAEL KARPf	

9/18/2015	09:00AM	ARRAIGNMENT/PLEA HEARING	OTHER	MICHAEL KARPf	
8/27/2015	1:30PM	SCHEDULING CONFERENCE		MICHAEL KARPf	
6/4/2015		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
6/1/2015	1:30PM	ARRAIGNMENT/PRETRIAL HEARING		MICHAEL KARPf	
4/20/2015	1:30PM	ARRAIGNMENT/CALENDAR CALL		MICHAEL KARPf	
3/24/2015		BOND ORDER			DENIED/
3/10/2015		PETITION FOR BOND/NISI			031915 @ 845AM/CERT OF SERV/
2/12/2015		MOTION - FOR DISCOVERY			CERT OF SERV/
2/12/2015		DEFENDANTS LIST OF WITNESSES			
1/20/2015		CONSOLIDATED MOTIONS PACKAGE			
1/20/2015		ENTRY OF APPEARANCE			GILBERT STACY/
1/5/2015 2:02:03 PM		SCN			INITIAL CASE SCREENING / SCANNING
1/2/2015		ACCUSATION FILED - ENTERED			

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